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Plaintiffs complained that the Valley School, one of the elementary schools in Manhasset, New York, was segregated. Negroes in the Valley area lived at a low socioeconomic level; typically, their children were from two to three years behind the norms in reading achievement. Excerpts from the court case, R. Blocker vs. the Board of Education of Manhasset, involve the basic contention that segregated schools, whether de jure or de facto, are inferior and deprive children of minority groups of equal educational opportunities. The defendants argued that minority schools are not inferior and that schools should not be responsible for the accidental pattern of housing which led to the ethnic imbalance. Legal precedents were presented. The defense defended the neighborhood school policy contending that a homogeneous student body affords a greater opportunity for optimum benefits to the students because educational programs can be designed to meet their particular needs. The teaching staff did not support this view. The doctrine set by the court included that, by maintaining and perpetuating a segregated school system, the defendant board transgressed the prohibitions of the Equal Protection Clause of the Fourteenth Amendment. However, the court did not hold that the Constitution requires a compulsive distribution of school children on the basis of race in order to achieve a proportional representation of white and Negro children in each elementary school within a school district.

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THE MANHASSET RULING

Joseph C. Zavatt

Plaintiffs, represented by Robert L. Carter, Jawn A. Sandifer, and Maria L. Marcus of NAACP, complained that the Valley School, one of the elementary schools in Manhasset, New York, was segregated. All the District's Negro children attended Valley school while the white children attended two all-white schools. Negroes in the Valley area lived at a low socioeconomic level; typicaliy, their children were two to three years behind norms in reading achievement. Since 1957, teachers in the District had been calling for integrated schools and for improved education for all children. Following are excerpts from Ralph Blocker etc., et al. v. The Board of Education of Manhasset, New York, *United States District Court, Eastern District of New York, 62-C-285, January 4, 1964, Joseph C. Zavatt, Chief Judge.*

BASIC CONTENTIONS

The plaintiffs contend that the racial imbalance in the Valley School is segregation in the constitutional sense and within the decision of the Supreme Court in *Brown v. Board of Education;* that segregated schools, be they segregated de jure or "de facto," are inferior per se and deprive children of minority groups of equal educational opportunities. This segregation, they contend, is the result of the defendant District's rigid neighborhood school policy; that, though innocent and harmless in its inception, the continued enforcement of this policy results in the containment of all the Negro children of the District and is tantamount to a law compelling segregation of the races. The plaintiffs concede that the Valley School is equal to the all-white schools in facilities, programs, teaching materials, teaching and administrative staff, etc. Nevertheless, they contend that, though equal, the elementary schools of the District are separate; that, therefore, they fall within the prohibition of "separate but equal" laid down in *Brown.* While the plaintiffs contend that damage flows from separate but equal school facilities as a matter of law, they contend further that they have proven damage in fact. Under either theory they claim a deprivation of rights guaranteed by the Fourteenth Amendment.

The defendants deny that *Brown* is controlling as a matter of law. They maintain that the neighborhood school policy of the District is color blind; that it operates equally upon all children within each attendance area, regardless of race or color; that the racial imbalance in the Valley area is a fortuitous circumstance due solely to the pattern of housing within the District for which they are not responsible; that, therefore, they are under no duty to change attendance area lines or modify their present attendance rules. They contend, further, that the plaintiffs and the

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The defendants deny that *Brown* is controlling as a matter of law. They maintain that the neighborhood school policy of the District is color blind; that it operates equally upon all children within each attendance area, regardless of race or color; that the racial imbalance in the Valley area is a fortuitous circumstance due solely to the pattern of housing within the District for which they are not responsible; that, therefore, they are under no duty to change attendance area lines or modify their present attendance rules. They contend, further, that the plaintiffs and the

class they represent are not being injured by the continuance of the board's attendance rules. Under all of these circumstances, the defendants maintain that the plaintiffs have failed to prove any deprivation of Fourteenth Amendment rights.

LEGAL PRECEDENTS

The Supreme Court was unanimous in disposing of what is one of the most important legal issues to have come before it during the past century. It vindicated the prophetic vision of Mr. Justice Harlan, the lone dissenter in *Plessy v. Ferguson*, (1896), and pierced "the thin disguise" of equal educational opportunity under segregation in public schools solely on the basis of race. *Brown* brought to an end the legal sanction of so-called "separate but equal" treatment of our Negro citizens.

In *Bell* the court concluded that there was "no support for the plaintiffs' position that the defendant has an affirmative duty to balance the races in the various schools under its jurisdiction, regardless of the residence of students involved." *(Bell v. School City of Gary, Indiana.)* The question, however, is not whether the state has an affirmative duty to balance the races, but, rather, whether it is to be enjoined from countenancing, and thereby perpetuating, a system of virtually separate elementary schools for Negro and white children. To frame the question otherwise would, in the instant case, be delusive; indeed, the law in this Circuit, although it has yet to be fully established, would appear to warrant a more realistic appraisal of the defendants' constitutional obligations.

Branche v. Board of Education (1962) is the only other case in this Circuit in which the basic question presented in the instant case has been discussed. What was said there by my distinguished colleague, Judge Dooling, was not dispositive of the plaintiffs' claims; he merely passed upon the defendants' motion for summary judgment—which he denied. In so moving, the defendants contended that:

> plaintiffs' claim is fatally defective because it requires for its support an affirmative legal duty to integrate educational facilities and there is no such legal duty as distinguished from a duty not to segregate children racially for educational purposes.

Speaking of segregated education, he said:

> That it is not coerced by direct action of an arm of the state cannot, alone, be decisive of the issue of deprivation of constitutional right . . . it (the school board) cannot accept and indurate segregation on the ground that it is not coerced or planned but accepted. Failure to deal with a condition as really inflicts it as does any grosser imposition of it . . .
>
> So here, it is not enough to show that residence accounts for the fact of segregation and to contend that therefore the segregation is ineluctable.

To the extent that my associate construes the Constitution as requiring, under certain circumstances, something more than mere passivity by a school board, this court is in agreement. See also *Jackson v. Pasadena City School District.* (1963). The Fourteenth Amendment does not cease to operate once the narrow confines of the *Brown*-type situation are exceeded; the Supreme Court has made it clear that it is the duty of the courts to interdict "evasive schemes for segregation whether attempted 'ingeniously or ingenuously,' " *Cooper v. Aaron,* (1958), and has reaffirmed that objective in a recent decision on the subject. See *Goss v. Knoxville Board of Education* (1963). Viewed in this context, then, can it be said that one type of segregation, having its basis in state law or evasive schemes to defeat desegregation, is to be proscribed, while another, having the same effect but another cause, is to be condoned? Surely, the Constitution is made of sturdier stuff.

NEIGHBORHOOD SCHOOL POLICY

The rule or regulation of the defendant school board, delineating the three attendance areas and requiring

children to attend school within their respective areas, is commonly referred to as the neighborhood school policy. It is not unique to the Manhasset School District. It has been used with success throughout the Nation for many years. *(Bell v. School City of Gary, Indiana.)* There is general agreement among educators that such a policy is sound.

A neighborhood school has several advantages. Some are minimal; others could apply equally to other methods of pupil assignment. Easy access and the feasibility of lunch at home are two obvious advantages. Administrative officials of the Manhasset school system who testified emphasized the advantages of the homogeneous student body which results from the requirement that children attend the school within their neighborhood. It was their opinion that the homogeneity of the students at the Valley School, for example, affords a greater opportunity to the school administrators and the members of the faculty to gear the operation of the school so as to provide optimum benefits to its students by an educational program designed to meet their particular needs No teacher so testified. The view of the teaching staff is recorded in the minutes of All-School Council meetings, referred to above, held long before the plaintiffs brought this action. They do not subscribe to the alleged advantages of a homogeneous student body. On the contrary, they "feel that each elementary school should have a student population which is culturally, socially and economically heterogeneous." Expert witnesses for the plaintiffs testified to the same effect. The testimony of defendants' witnesses as to the alleged advantage of a homogeneous student body, would appear to be at variance with the recommendation to the board made by the superintendent of schools in his memorandum of March 25, 1957, in which he recommended plans looking toward "the eventual integration of the Valley School children with other elementary school children in the district." Were it a fact that the homogeneity produced by a neighborhood school policy is an important educational advantage, it should be as valid tomorrow as it it today.

SEGREGATION IN MANHASSET?

One hundred per cent of the Negro elementary school children are contained in one school separate and apart from 99.2% of the white elementary school children of the entire District. The population trend of the Valley area from 1933 to date, as a result of which this area is now a predominantly Negro community, is a forecast of things to come. Were there Negro children in the two all-white schools, it could be argued that there was mere racial imbalance in the three elementary schools; that the Negro children of the entire District, though not distributed proportionately throughout all of the elementary schools, were not separated from their white contemporaries as they are here. The facts in the instant case present a situation that goes beyond mere racial imbalance. It is not unreasonable to draw from the evidence in this case the inference that the small nucleus of white children at the Valley School will soon disappear. But upon the facts as they exist today, the separation of 100% of the Negro children from 99.2% of the white children approximates closely the total separation condemned in *Brown*. The fact that 100% of the Negro children are not separated from 8/10ths of one per cent of the white children does not divest it of its segregated character.

For all practical purposes, the elementary school system of the defendant District, unlike the school districts in these cases, is as racially segregated as those in *Brown*. "Law addresses itself to actualities."

The defendants are, and for several years have been, fully aware of the total separation of the entire Negro elementary school population from over 99% of their white contemporaries. With knowledge of this fact, were they to prescribe today the attendance area lines which now exist could such action be justified by the normal criteria supporting the neighborhood school policy? Were the board to create out of the total Dis-

trict one disproportionately small attendance area, provide a school for a disproportionately small student body composed almost entirely of Negro children and representing 100% of the Negro student population of the District, and couple such action with a rigid no-transfer policy —were the board to take such action today would it not be reasonable to regard it as a rather ingenuous device to separate the races, protestations to the contrary notwithstanding? Could such attendance, if drawn today, be insulated from the Fourteenth Amendment merely because the bylaw or rule of the board did not mention the word Negro, but, rather, was cast in terms of residence?

The defendants argue that the cause of this racial separation in the District differs from that in *Brown;* that, here, the Negroes have segregated themselves by moving into the Valley area voluntarily in order to benefit from and enjoy the dual attractions of low-rent housing and a good, conveniently located school for their children. True it is that they have taken up residence in the Valley area under no compulsion of law but, rather, under that of the purse. Considering the disparity in socioeconomic levels within the District, their selection of the Valley was only Hobson's choice.

SEGREGATION BY LAW

On the facts of this case, the separation of the Negro elementary school children is segregation. It is segregation by law — the law of the school board. In the light of the existing facts, the continuance of the defendant board's impenetrable attendance lines amounts to nothing less than state imposed segregation. The defendant board "cannot accept and indurate segregation on the ground that it is not coerced or planned but accepted. Failure to deal with a condition as really inflicts it as does any grosser imposition of it."

This segregation is attributable to the state. The prohibitions of the Fourteenth Amendment "have reference to actions of the political body denominated a state, by whatever instruments or in whatever modes that atcion may be taken. . . . Whoever, by virtue of public position under a state government, . . . takes away the equal protection of the laws, violates the constitution inhibition; and as he acts in the name and for the stae, and is clothed with the state's power, his act is that of the State." *Ex Parte Virginia* (1880). "The situation here is in no different posture because the members of the school board and the superintendent of schools are local officials; from the point of view of the Fourteenth Amendment, they stand in this litigation as the agents of the State." *Cooper v. Aaron.*

In a publicly supported, mandatory state educational system, the plaintiffs have the civil right not to be segregated, not to be compelled to attend a school in which all of the Negro children are educated separate and apart from over 99% of their white contemporaries. That they are being so compelled is a fact.

The denial of the right not to be segregated cannot be assuaged or supported by evidence indicating that underachievement in the three R's may be due in whole or in part to low socioeconomic level, home influence or measured intelligence quotient. The role of public education in our democracy is not limited to these academic subjects. It encompasses a broader preparation for participation in the mainstream of our society. Public education "is the very foundation of good citizenship." *Brown v. Board of Education.* The extent to which this objective is being attained is not measurable by a comparison of achievement in the 3 R's to IQ, or to socioeconomic level. Nor can segregation be justified on the basis of the opinion of the defendants that it enures to the benefit of those segregated.

We are dealing with children in grades K through 6, i.e., from age 5 to 11 .They see themselves living in an almost entirely Negro area and attending a school of similar character. If they emerge beyond the confines of the Valley area into the District at large, they enter a different world inhabited only by white people. They are not so mature and

sophisticated as to distinguish between the total separation of all Negroes pursuant to a mandatory or permissive state statute based on race and the almost identical situation prevailing in their school district. The Valley situation generates the same feeling of inferiority as to their status in the community as was found by the Supreme Court in *Brown* to flow from substantially similar segregation by operation of state law.

This harmful effect, like pain and suffering in a tort action, is not susceptible of precise measurement. Nor is it known exactly when and how this psychological damage is manifested. The court cannot accept the opinion of Dr. Brickell, no psychologist, that psychological damage, if any exists, must necessarily be reflected in a lower level of achievement in the 3 R's than is normally expected on the basis of measured intelligence or socioeconomic level.

Despite all of the publicity attending the decision in *Brown* and the speculation as to its implications; despite the extreme situation which has prevailed in its District; despite the "intense interest of the staff and the growing interest of a certain group of the Valley area residents"; despite the defendant Collins' proposed plan for eventual integration — there has never been any discussion at a board meeing to ascertain whether the basic obligation of the defendants, to afford the Valley children the opportunity to obtain the best education possible, can be pursued by means less drastic than its traditional rigid neighborhood school policy. The repeated references to possible community preference and the statement that the Valley situation is a matter for community determination betray an unwillingness to face an educational problem as such. It is the board, not the electors, who fix attendance policies. It is the board, not the electors, who must determine when, if ever, these policies should be modified. That there are less drastic means for achieving the educational objective is demonstrated by Dr. Collins' recommendation to the board as far back as 1957. This is not to suggest that his proposed alternative is the only alternative but, rather, that there are alternatives, less drastic in their effect, to the continuance of the present rigid policy. *Shelton v. Tucker, supra.* The defendant District is not comparable to the Pontiac School District; this case is not comparable to *Henry v. Godsell, supra,* in which Judge Levin found that a relaxation of the neighborhood school policy would result in "utter chaos." Nor are there present here the complicated problems present in Gary, Indiana, with a public school population of over 43,000 of which 53.5% are Negroes, or in large metropolitan areas—New York City for example. There are, no doubt, situations in which no alternative may be feasible. No such insurmountable obstacle appears to be present here.

MANHASSET DOCTRINE

The court is aware of the pendency of numerous suits throughout the Nation involving race relations and public education in which the facts may differ materially from those in the instant case. It is advisable, therefore, to state precisely what today's opinion has and has not decided. The court does not hold that the neighborhood school policy per se is unconstitutional; it does hold that this policy is not immutable. It does not hold that racial imbalance and segregation are synonymous or that racial imbalance, not tantamount to segregation is violative of the Constitution. It does hold that, by maintaining and perpetuating a segregated school system, the defendant board has transgressed the prohibitions of the Equal Protection Clause of the Fourteenth Amendment. The court does not hold that the Constitution requires a compulsive distribution of school children on the basis of race in order to achieve a proportional representation of white and Negro children in each elementary school within a school district. There is no authority to support this claim of the plaintiffs. There is not presented here the question as to whether or not such compulsive distribution, though not required, may be permitted under the Constitution or by state law.

This decision makes unnecessary a determination as to whether the se-

gregation found to exist is violative of other clauses of the Fourteenth Amendment or of the Civil Rights Act.

The defendant school board is hereby directed to present to this court, on or before April 6, 1964, a plan to desegregate the elementary school system of the defendant District, in accordance with this opinion, to begin no later than the opening of the 1964-1965 Fall Term. The court hereby retains jurisdiction of this action until such a plan has been presented, approved by the court and implemented.

When one compares the magnitude of the need for a broadened program of public education with the size of our commitment, I think it is fair to say that we are still living in the pre-education phase of American history. We may as well recognize that the old traditional arguments about infinitesimal financial increases in our educational commitment, the eventual adoption of some kind of Federal aid to education and a few $5-a-week raises for teachers, have no relevance any more. We will have to expand our educational coverage to the point where all but a minute fraction of our young people are given educational training until they have achieved the equivalent of a high school diploma. At the same time we have to intensify the educational experience of the individual pupil, not to the point where all our class sizes are below 30 children, but to the point where the ratio of teachers to pupils is 1 to 10, or even less, and where special services are available to children who start their education with severe economic psychological or cultural handicaps. It also means raising the age limit for attending school from 16 to 18. This means a revolutionary expansion of our public education program to at least 8 or 10 times its present level.

--Joseph P. Lyford,
Fund for the Republic

A HIGHLY IMPORTANT BOOK

Harold Baron

The author is co-director of research, Chicago Urban League.

Anyone who has the interest to read a journal entitled *Integrated Education* should send immediately for the study, *Public School Segregation and Integration in the North*, published by the National Association of Intergroup Relations Officials. At last, we have a compact, comprehensive guide to the problems of *de facto* school segregation and the road ahead to integrated education. The NAIRO Commission on School Integration and especially its Director of Research and principal author of the report, Doxey A. Wilkerson, are to be commended for their timely and competent contribution. The study is comprehensive enough to be indispensable to professionals in education and intergroup relations. It is comprehensible enough to be of great service to the intelligent layman.

Dr. Wilkerson has added to the usefulness of this study by placing the problem of segregation, northern style, within a broad historical and social framework. The reader is immediately armed with the insight that